



04-131

Introduce: 7-19-04

ORDINANCE NO. 18408

1 AN ORDINANCE amending Chapter 27.58 of the Lincoln Municipal Code  
2 relating to the Airport Environs Noise District by amending Section 27.58.010 to change the  
3 noise level reference from Ldn to DNL; by amending Section 27.58.020 to delete the number "1"  
4 from the district name, to change the noise level reference from Ldn to DNL, and to amend the  
5 boundaries of the district; by amending Section 27.58.030 to delete the number "1" from the  
6 district name; by amending Section 27.58.050 to revise provisions regarding permitted uses; by  
7 amending Section 27.58.060 to revise provisions regarding conditional permitted uses; by  
8 amending Section 27.58.080 to delete the requirement that a Covenant, Notice and Acknowledg-  
9 ment be granted and instead to require the grant of an avigation and noise easement; by amending  
10 Section 27.58.090 to delete reference to the Covenant, Notice and Acknowledgment; by  
11 amending Section 27.58.100 to delete reference to the Covenant, Notice and Acknowledgment  
12 and to add references to the avigation and noise easement; and repealing Sections 27.58.010,  
13 27.58.020, 27.58.030, 27.58.050, 27.58.060, 27.58.080, 27.58.090, and 27.58.100 of the Lincoln  
14 Municipal Code as hitherto existing.

15 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

16 Section 1. That Section 27.58.010 of the Lincoln Municipal Code be amended to  
17 read as follows:

18 **27.58.010 Scope of Regulations.**

19 The regulations set forth in this chapter, or set forth elsewhere in this title when referred  
20 to in this chapter, are regulations in the Airport Environs Noise District. The regulations shall

1 apply to the area in the vicinity of the Lincoln municipal airport defined as Airport Environs  
2 Noise District † in Section 27.58.020. References to specific ~~Ln~~ DNL lines shall mean those  
3 ~~Ln~~s DNLs as shown on the “Airport Environs Noise District Map.”

4 Section 2. That Section 27.58.020 of the Lincoln Municipal Code be amended to  
5 read as follows:

6 **27.58.020 Definitions.**

7 For the purpose of this chapter, certain terms and words are hereby defined:

8 **Airborne noise** shall mean noise radiated initially into and transmitted through air.

9 **Airport Environs Noise District †** shall mean an area established on the Airport  
10 Environs Noise District Map ~~dated June 1, 2000~~ (hereinafter Airport Environs Noise District  
11 Map), and more particularly described as follows:

12 ~~Beginning at a point located on Southwest 12th Street at the~~  
13 ~~southeast corner of the northern half of Section 9, Township 9~~  
14 ~~North, Range 6 East, heading north approximately 8,100 feet along~~  
15 ~~Southwest 12th Street, the eastern borders of Sections 9, Township~~  
16 ~~9 North, Range 6 East, and 4, Township 9 North, Range 6 East;~~  
17 ~~and Section 33, Township 10 North, Range 6 East to the tracks of~~  
18 ~~the Burlington Northern Railroad; heading then northeast~~  
19 ~~approximately 2,000 feet along the railroad tracks; then heading~~  
20 ~~north approximately 8,200 feet through the western half of Section~~  
21 ~~34, Township 10 North, Range 6 East, along Southwest 9th Street~~  
22 ~~and the western half of Section 27, Township 10 North, Range 6~~  
23 ~~East to the tracks of the Burlington Northern Railroad, 500 feet~~  
24 ~~south of West "O" Street; following the railroad tracks northeast to~~  
25 ~~the eastern border of Section 22, Township 10 North, Range 6~~  
26 ~~East; following the tracks of the Union Pacific Railroad~~  
27 ~~northwesterly to Northwest 12th Street; heading then north along~~  
28 ~~Northwest 12th Street to the southeast corner of Section 28;~~  
29 ~~Township 11 North, Range 6 East; heading then east approxi-~~  
30 ~~mately one mile to North 1st Street; heading then north along~~  
31 ~~North 1st Street to the city's three-mile zoning jurisdiction line;~~  
32 ~~heading then west along the city's three-mile zoning jurisdiction~~  
33 ~~line to Northwest 40th Street; heading then south to the southwest~~  
34 ~~corner of Section 20, Township 11 North, Range 6 East; heading~~

1 then west on McKelvie Road to the northwest corner of Section 25;  
2 Township 11 North, Range 5 East; heading then south on North-  
3 west 70th Street to Fletcher Avenue; heading then east along  
4 Fletcher Avenue to Northwest 56th Street; heading then south on  
5 Northwest 56th Street approximately 19,400 feet to Interstate 80;  
6 heading then west along Interstate 80 to the western border of  
7 Section 24, Township 10 North, Range 5 East; heading then south  
8 along the western borders of Sections 24, Township 10 North,  
9 Range 5 East and 25, Township 10 North, Range 5 East to West  
10 "A" Street; heading then east along West "A" Street to the south-  
11 west corner of Section 30, Township 10 North, Range 6 East;  
12 heading then south along the western border of Section 31;  
13 Township 10 North, Range 6 East to Van Dorn Street; heading  
14 then east on Van Dorn Street to Southwest 40th Street; heading  
15 then south on Southwest 40th Street to West Claire Avenue; and  
16 then heading east along West Claire Avenue to its termination at  
17 Coddington Avenue and then further east approximately 2,700 feet  
18 to a point located at Southwest 12th Street at the southeast corner  
19 of the northern half of Section 9, Township 9 North, Range 6 East.

20 Beginning at a point located on Southwest 12th street at the  
21 southeast corner of the north half of Section 9, Township 9 North,  
22 Range 6 East of the 6th P.M., Lancaster County, Nebraska, thence  
23 northerly along Southwest 12th Street, said line also being the east  
24 line of Sections 9 and 4, Township 9 North, Range 6 East, and the  
25 east line of Section 33, Township 10 North, Range 6 East a  
26 distance of approximately 8,100 feet to the centerline of the  
27 Burlington Northern Santa Fe railroad tracks; thence northeasterly  
28 along said railroad track centerline a distance of approximately  
29 2,000 feet; thence northerly along the centerline of Southwest 9th  
30 Street and its extension north and south through the west half of  
31 Sections 34 and 27, Township 10 North, Range 6 East a distance of  
32 approximately 8,200 feet to the centerline of a Burlington Northern

Santa Fe railroad track. Said track being approximately 500 feet south of "O" Street; thence northeasterly along the former Burlington Northern Santa Fe railroad centerline through Sections 27 and 22, Township 10 North, Range 6 East to the intersection of said railroad centerline and the east line of Section 22, Township 10 North, Range 6 East; thence northerly along the east line of said Section 22 a distance of approximately 150 feet to the centerline of the Union Pacific railroad tracks; thence northwesterly along said railroad track centerline through Sections 22 and 15, Township 10 North, Range 6 East to an intersection with the west line of Section 15, Township 10 North, Range 6 East; thence north along the west line of Section 15, Township 10 North, Range 6 East to an intersection with the centerline of Northwest 12th Street; thence northerly along the centerline of Northwest 12th Street to its intersection with the centerline of Northwest 13th Street in Section 3 Township 10 North, Range 6 East; thence continuing northerly along the centerline of said Northwest 13th Street to its intersection with the centerline of West Fletcher Avenue; thence westerly along the centerline of said West Fletcher Avenue to a point on the west line of Section 34, Township 11 North, Range 6 East; thence northerly along the west line of said Section 34 to the southeast corner of Section 28, Township 11 North, Range 6 East; thence east along the south line of Section 27, Township 11 North, Range

6 East to an intersection with North 1st Street, said point also being the southeast corner of Section 27, Township 11 North, Range 6 East; thence north along North 1st Street and along the east line of Sections 27, 22, and 15, Township 11 North, Range 6 East to the City of Lincoln's three-mile zoning jurisdiction line; thence westerly along said three-mile zoning jurisdiction line to its intersection with Northwest 70th Street. Said point being on the west line of Section 24, Township 11, Range 5 East; thence south along the west line of Sections 24, 25 and 36, Township 11 North, Range 5 East, and along the west line of Sections 1, 12, 13, 24, 25 and 36, Township 10 North, Range 5 East, and along the west line of Sections 1 and 12, Township 9 North, Range 5 East to the southwest corner of the north half of Section 12, Township 9 North, Range 5 East; thence east along the south line of the north half of Section 12, Township 9 North, Range 5 East, and along the south line of Sections 7, 8 and 9, Township 9 North, Range 6 East, said line also being along West Claire Avenue and its extension east and west, to the point of beginning at the southeast corner of the north half of Section 9, Township 9 North, Range 6 East.

**Day-night average sound level (~~L<sub>dn</sub>~~ DNL)** shall mean the sum of noise emission equivalent of A-weighted sound level during a 24-hour day typifying annual average conditions after addition of 10 decibels to sound levels in the night before 7:00 a.m. and after 10:00 p.m.

1           **Exterior door** shall mean all exit doors of a building that are located between  
2           conditioned and unconditioned space. A basement, crawl space, or garage is considered  
3           unconditioned space unless it is provided with a positive heat supply to maintain a minimum  
4           temperature of 50 degrees F.;

5           **Habitable space** shall mean space or room in a structure for living, sleeping, eating, or  
6           cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, solariums,  
7           sunrooms and similar areas are not considered habitable space.

8           **Noise-sensitive manufacturing and noise-sensitive communication facilities** shall  
9           include, but not be limited to, the manufacture and assembly of micro-electronics, technical and  
10          scientific instruments, photographic and optical goods, and other manufacturing sensitive to  
11          speech interference or vibration, and radio and television broadcasting studios.

12                 Section 3. That Section 27.58.030 of the Lincoln Municipal Code be amended to  
13          read as follows:

14          **27.58.030     Use Regulations.**

15                 Any use permitted in the underlying zoning district in which the proposed use is located  
16          shall be allowed in the Airport Environs Noise District † except as prohibited within the  
17          provisions of this chapter and, provided that additional requirements set forth in this chapter are  
18          met. References to allowable uses as provided within this chapter are conditioned upon the said  
19          use being in compliance with allowable uses within the underlying zoning district.

20                 Section 4. That Section 27.58.050 of the Lincoln Municipal Code be amended to  
21          read as follows:

1     **27.58.050     Permitted Uses in Relation to Noise Exposure Levels.**

2             (a)     ~~A~~ The use of a building or premises for the following purposes may any use  
3     permitted under Section 27.58.030 shall be allowed in the Airport Environs Noise District + if it  
4     lies within the specified noise exposure levels ~~shown below~~ set out in Figure 27.58.050 shown at  
5     the end of this chapter, conditioned upon compliance with Section 27.58.080 of this chapter:

6                     (1)     ~~Mobile home courts, schools, libraries, churches, health care facilities,~~  
7     ~~auditoriums, concert halls, housing for the elderly, and music shells, not to exceed Ldn 65 line.~~

8                     (2)     ~~Hotels and motels, playgrounds, neighborhood parks, noise-sensitive~~  
9     ~~manufacturing, and noise-sensitive communication facilities, not to exceed Ldn 70 line.~~

10                    (3)     ~~Cemeteries, mausoleums and undertaking establishments, riding, water~~  
11     ~~sports, tennis courts, skating rinks, bowling alleys and other recreational facilities, theaters, spec-~~  
12     ~~tator sports, and veterinary facilities and kennels, not to exceed Ldn 75 line.~~

13                    (4)     ~~Office buildings, personal business, governmental services, com-~~  
14     ~~munication facilities, extensive natural recreational areas, financial institutions, retail trade,~~  
15     ~~restaurants, bars, amusements, sports arenas, golf courses and related support facilities, whole-~~  
16     ~~sale, manufacturing, construction services, repair services, livestock farming, animal breeding,~~  
17     ~~utilities, agriculture, mining, fishing, forestry, warehouses, storage facilities, historical~~  
18     ~~preservation, wind energy conversion systems, transportation facilities, no noise-related~~  
19     ~~restrictions.~~

20             (b)     Where property is undeveloped, only such portion of it as is actually within the  
21     ~~Ldn~~ DNL lines shall be considered at or within that ~~Ldn~~ DNL line. However, at such time as  
22     said property shall be subdivided or platted, any platted buildable lots intersected by an ~~Ldn~~ DNL  
23     line shall be deemed to be wholly within the highest ~~Ldn~~ DNL line.

**Figure 27.58.050**  
**Generalized Use Matrix for Airport Environs Noise District**

<u>Uses Permitted Within Each Noise Contour Level *</u>	<u>Airport Noise Environs District</u>			
	<u>Below 60 DNL</u>	<u>60 to 65 DNL</u>	<u>65 to 70 DNL</u>	<u>70 to 75 DNL</u>
<u>All residential uses (incl. RV parks and campgrounds)</u>	<u>Y</u>	<u>Y [1]</u>	<u>N</u>	<u>N</u>
<u>Educational and religious facilities</u>	<u>Y</u>	<u>Y [1]</u>	<u>N</u>	<u>N</u>
<u>Health and childcare facilities</u>	<u>Y</u>	<u>Y [1]</u>	<u>N</u>	<u>N</u>
<u>Outdoor sport, recreation, entertainment (except for race tracks for motorized vehicles, open space and natural areas, golf courses and trails) and parks facilities.</u>	<u>Y</u>	<u>Y</u>	<u>N</u>	<u>N</u>
<u>Indoor sport, recreation, and entertainment facilities</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
<u>Noise-sensitive manufacturing and communication facilities</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
<u>Cemeteries, mausoleums and undertaking establishments</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
<u>Hotels/ motels</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
<u>Race Tracks for Motorized Vehicles</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
<u>Offices, retail and service businesses, restaurants, eating and drinking establishments</u>	<u>Y</u>	<u>Y [1]</u>	<u>Y [1]</u>	<u>Y [1]</u>
<u>Open space and natural areas</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Golf courses and trails</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Service stations and repair services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Assembly, processing, manufacturing, refining, mining, storage, transportation, utility, communication and distribution facilities</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Farming, livestock, breeding and feeding; plant nurseries</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Parking lots</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Signs</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Notes:</u> <u>Y - Permitted</u> <u>N - Not permitted</u>				
<u>1. Development is required to incorporate acoustical features as a condition of building permit issuance, as described in Section 27.58.060 of this chapter.</u>				
<u>* All uses permitted within the Airport Environs Noise District shall be conditioned upon the grant by the property owner of an avigation and noise easement agreement, as described in Section 27.58.080 of this chapter.</u>				



Section 5. That Section 27.58.060 of the Lincoln Municipal Code be amended to read as follows:

**27.58.060 Conditional Permitted Residential Uses in Relation to Noise Exposure Levels.**

(a) The use of A a building or premises for a use designated Y [1] in Figure 27.58.050 shown at the end of this chapter is permitted ~~may be used for residential purposes in the Airport Environs Noise District~~ if it lies within the specified noise exposure levels ~~in areas between Ldn 65 line and Ldn 70 line, in conformance with the requirements of Section 27.58.080 of this title and the conditions prescribed herein:~~

~~(1) — Prior to applying for a building permit, an applicant shall prepare and submit to the Planning Director for his review and approval a site plan for the proposed building or buildings which shall be designed to minimize the impact of noise. This may include, but need not be limited to:~~

~~(i) Placing as much distance as possible between the noise source and noise-sensitive activities;~~

~~(ii) Placing noise-compatible activities, such as parking lots and open space, between the noise source and the sensitive activities;~~

~~(iii) Using buildings as noise barriers;~~

~~(iv) Orienting buildings so that nonhabitable space, such as utility rooms, laundry rooms and garages, are located between the noise source and the habitable space;~~

~~(v) Utilizing the site's natural shape and contours or constructing noise barriers between noise sources and noise-sensitive areas. Such noise barriers may include but need not be limited to berms made of sloping mounds of earth, walls and fences constructed of a~~

1 ~~variety of material, dense plantings of trees and shrubs, e.g., 100-foot depth, and any of these~~  
2 ~~combinations.~~

3 (2) ~~The site plan submitted to the Planning Director shall be accompanied by~~  
4 ~~the following information:~~

5 (i) ~~An accurately drawn plan showing location of existing and~~  
6 ~~proposed structures on the property, open space, parking areas, location of existing trees,~~  
7 ~~proposed landscape plans, sidewalks, floor plan identifying bedrooms, kitchens, living rooms,~~  
8 ~~garages, etc., lot lines and building setback lines;~~

9 (ii) ~~Contour lines at intervals not to exceed five feet based on NAVD~~  
10 ~~1988, if the site has not been platted;~~

11 (iii) ~~Location of site with relation to specific Ldn lines;~~

12 (iv) ~~Grading plan, if any;~~

13 (v) ~~Discussion of additional steps to minimize the noise impact, if any;~~

14 (vi) ~~Date prepared, scale, and north point;~~

15 (vii) ~~Name, address and telephone number of applicant;~~

16 (viii) ~~Other relevant information, if any, relating to noise attenuation.~~

17 (3) ~~Within twenty days from the receipt of a site plan with the required~~  
18 ~~information, the Planning Director shall notify the applicant and the Director of Building and~~  
19 ~~Safety whether or not the site plan has been approved or disapproved. If the site plan is~~  
20 ~~disapproved, the Planning Director shall specify the reasons for such disapproval. A site plan~~  
21 ~~shall be approved if it reflects a reasonably effective method of minimizing the impact of the~~  
22 ~~noise to which the proposed building or buildings would be subjected.~~

1                   (4-1) ~~If the site plan is approved by the Planning Director, a~~ A building permit  
2 may be issued by the Director of Building and Safety provided that the building plan shows a  
3 design that incorporates acoustical features described below in addition to all other applicable  
4 requirements of the Lincoln Building Code as now existing or hereinafter amended:

5                   (i) All exterior doors shall be either:

6                   A. solid-core or metal-clad construction of at least 1 3/4 inches  
7 thick, or

8                   B. separately equipped with wood or metal storm door, or

9                   C. multiple-glazed.

10                  (ii) ~~Storm or m~~ Multiple-glazed windows shall be provided for all  
11 habitable space.

12                  (iii) Through-the-wall/door mailboxes, ~~window or dome~~ venting sky-  
13 lights, jalousie windows, or other direct openings from the interior to the exterior of the building  
14 shall be prohibited.

15                  (iv) Mechanical ventilation shall be provided of a type and design to  
16 provide adequate environmental comfort with all doors and windows closed during all seasons.  
17 Window and through-the-wall ventilation units shall not be used. Commercial cooking areas are  
18 exempt from these conditions.

19                  (v) ~~Workmanship on doors and windows must be such that they are as~~  
20 ~~close-fitting as possible or weather-stripping seals shall be incorporated on all edges to eliminate~~  
21 ~~gaps.~~

22                  (5) ~~In the event that the Planning Director disapproves the site plan, the~~  
23 ~~applicant may, within ten days after notification of such disapproval, appeal the decision of the~~

1 ~~Planning Director to the City Council. The City Council shall, by resolution, affirm, reverse, or~~  
2 ~~modify the decision of the Planning Director.~~

3 Section 6. That Section 27.58.080 of the Lincoln Municipal Code be amended to  
4 read as follows:

5 **27.58.080 Avigation and Noise Easements; ~~Covenant, Notice and Acknowledgment.~~**

6 (a) All uses allowed within the Airport Environs Noise District ~~1~~, except as provided  
7 in Section 27.58.090 shall be conditioned upon the grant by the property owner of a an ~~covenant,~~  
8 ~~notice, and acknowledgment~~ avigation and noise easement ~~that the property is located in Airport~~  
9 ~~Environs Noise District 1, providing for the disclosure of the airport noise and overflight impact~~  
10 ~~to future purchasers, as~~ Such easement shall be a condition of a subdivision, community unit  
11 plan, special permit, use permit, or building permit. ~~Covenant, notice, and acknowledgment~~ The  
12 avigation and noise easement ~~that property is located in Airport Environs Noise District 1~~ is to  
13 be submitted pursuant to the terms of this chapter and shall conform to the provisions contained  
14 in the model ~~covenant~~ avigation and noise easement, a copy of which is ~~shall remain on file in~~  
15 ~~the office of the Executive Director of the Lincoln Airport Authority and the City Clerk of the~~  
16 ~~City of Lincoln~~ shown in Figure 27.58.080 at the end of this chapter.

**Figure 27.58.080**  
**Model Avigation and Noise Easement**

INDENTURE made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between  
hereinafter called "Grantor", and Airport Authority of the City of Lincoln, a public body corporate and politic,  
hereinafter called "Airport Authority":

WHEREAS, Grantor is the owner in fee simple of a certain tract of land situated in Lancaster County, State  
of Nebraska, more particularly described as:

See attached Exhibit "A",

said tract of land being hereinafter referred to as "Grantor's Land"; and

WHEREAS, Airport Authority, as an agency of the City of Lincoln, Nebraska, is the owner and operator of  
a public airport known as Lincoln Municipal Airport situated on land adjacent or in close proximity to the above-  
described property; and

WHEREAS, Grantor has agreed in consideration of (\$ \_\_\_\_\_) and other valuable  
consideration, receipt of which is hereby acknowledged, to grant Airport Authority and City of Lincoln, Nebraska,  
the following Avigation and Noise Easement for the right of flight and consequent aircraft noise over Grantor's  
Land.

**NOW THIS INDENTURE, WITNESSETH:**

Grantor, for itself, its heirs, successors and assigns, for the said consideration, hereby grants and conveys to  
the City of Lincoln, Nebraska, the following Avigation and Noise Easement for the right of flight and consequent  
aircraft noise over Grantor's Land.

**NOW THIS INDENTURE, WITNESSETH:**

Grantor, for itself, its heirs, successors and assigns, for the said consideration, hereby grants and conveys to  
the City of Lincoln, Nebraska, for the use of Airport Authority, its successors and assigns, a perpetual easement and  
right-of-way for the unobstructed and unrestricted flight of aircraft in, through and across the airspace over and  
above Grantor's Land, at any legally permissible altitude, and the right, to the extent permitted by law, to make noise  
and cause fumes and disturbance arising from the ground and flight operations of all civil and military aircraft to,  
from and upon Lincoln Municipal Airport, regardless of the means of propulsion.

The Grantor, for itself, its heirs, successors, and assigns, does hereby waive all right to and interest in any  
claim or cause of action against the Airport Authority or the City of Lincoln, arising out of or from any legally  
permissible noise, vibration, avigations, pollution, light or noise generated from, above or on airport property, or  
sonic disturbance of any description, caused by flight operations of civil and military aircraft regardless of the means  
of propulsion, to, from and upon Lincoln Municipal Airport, which may result in damage to land or to any person,  
structure or other property located upon Grantor's Land, excepting, however, any claim or cause of action for any  
damage or injury to person or property resulting from any aircraft, or object therefrom, falling on, propelled into, or  
striking any person or property on Grantor's land.

The Grantor, for the said consideration, further agrees, that if Grantor or its heirs, successors or assigns,  
should sell or alienate any portion of Grantor's Land, Grantor, its heirs, successors or assigns shall include in every  
deed or conveyance evidencing such sale or alienation, a recitation that the grant is subject to all conditions  
contained within this Avigation and Noise Easement, and further as a condition of such transaction, Grantor shall  
require each Grantee to include such recitation in any subsequent deed or conveyance of any of the property herein  
above described as Grantor's Land.

In the event any condition or provision herein contained is held to be invalid by any court of competent  
jurisdiction, the invalidity of any such easement, condition or provision shall in no way affect any other condition or  
provision herein contained.

It is understood and agreed that this easement shall be binding upon the heirs, administrators, executors,  
and assigns of the Grantor, and that this easement shall run with Grantor's Land.

TO HAVE AND TO HOLD said Avigation and Noise Easement hereby granted unto the City of Lincoln  
for the use of the Airport Authority, its successors, and assigns, as appurtenant to the said Lincoln Municipal Airport  
and every part thereof.

1 IN WITNESS WHEREOF, the undersigned has caused its signature to be affixed this day of  
2 , 20.

3  
4 By: \_\_\_\_\_

5 STATE OF NEBRASKA )  
6 \_\_\_\_\_) ss.  
7 COUNTY OF LANCASTER )

8 On this day of , 20 , before me, a duly appointed and qualified notary public,  
9 personally appeared , to me personally known to be the same and  
10 identical person who signed the above and foregoing instrument and he did acknowledge the execution thereof to be  
11 his voluntary act and deed and that of .

12 WITNESS my hand and seal on the date last aforementioned.

13  
14 \_\_\_\_\_  
15 Notary Public

16 Section 7. That Section 27.58.090 of the Lincoln Municipal Code be amended to  
17 read as follows:

18 **27.58.090 Pre-existing Uses.**

19 Any existing use which was lawfully established at the time of the effective date of this  
20 chapter may be continued although such use does not conform to the provisions hereof.

21 However, the requirements set forth in this chapter shall be applicable to the portion of the use  
22 subject to enlargement, extension, conversion, reconstruction, or structural alteration, and not be  
23 retroactive to the entire existing structure. Nothing shall prohibit the reconstruction of a building  
24 legally in use at the time of the adoption of this chapter. A request for enlargement, extension,  
25 conversion, reconstruction, or structural alteration of a pre-existing use which does not conform  
26 to the provisions of this chapter shall be processed through special permit procedures set forth in  
27 Chapter 27.63. No person applying for a special permit to enlarge, extend, convert, reconstruct,

1 or alter a structure lawfully in existence at the time of the enactment of this chapter shall be  
2 required to submit an avigation and noise easement ~~or covenant, notice and acknowledgment~~ as a  
3 condition for approval thereof.

4 Section 8. That Section 27.58.100 of the Lincoln Municipal Code be amended to  
5 read as follows:

6 **27.58.100 Enforcement and Exemption.**

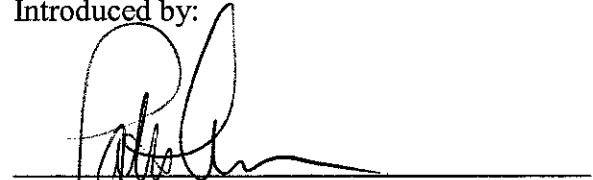
7 (a) Prior to the issuance of a building permit or other certificate, the Director of  
8 Building and Safety shall receive the executed ~~covenant, notice, and acknowledgment~~ avigation  
9 and noise easement for property in the Airport Environs Noise District ~~±~~ which shall then be  
10 forwarded to the Airport Authority or shall have received evidence that the executed ~~covenant~~  
11 avigation and noise easement was previously furnished to the Airport Authority. All ~~covenants~~  
12 avigation and noise easements shall be forwarded to the Airport Authority, which shall then be  
13 filed with the Register of Deeds at Authority's expense.

14 (b) Uses in connection with the operation of the Lincoln municipal airport, and  
15 properties owned or leased by the City of Lincoln, the Airport Authority of the City of Lincoln,  
16 military units, or other governmental agencies are hereby declared compatible and shall be  
17 exempted from the requirements of this chapter.

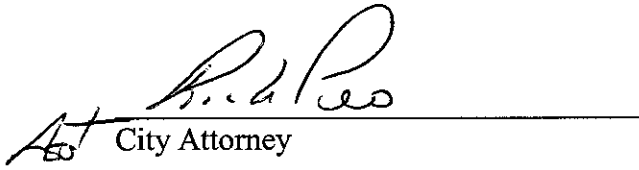
18 Section 9. That Sections 27.58.010, 27.58.020, 27.58.030, 27.58.050, 27.58.060,  
19 27.58.080, 27.58.090, and 27.58.100 of the Lincoln Municipal Code as hitherto existing be and  
20 the same are hereby repealed.

1                   Section 10. That this ordinance shall take effect and be in force from and after its  
2    passage and publication according to law.

Introduced by:

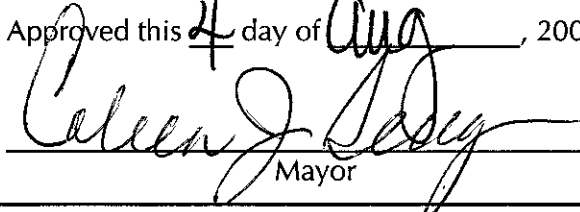


Approved as to Form & Legality:

  
City Attorney

AYES: Camp, Cook, Friendt,  
McRoy, Newman, Svoboda,  
Werner; NAYS: None.

J:\COUN\Legi04\04-131.wpd

Approved this 4 day of Aug, 2004:  
  
Mayor



# CITY OF LINCOLN

Request for: ☒ Ordinance  
☐ Resolution

(Do Not Write in this Space)

Bill Control No. 04-131 Date: 7/2

Docketing Date 7/12; PH: 7-19-04

(To Be Entered by City Clerk)

DATE July 1, 2004

REQUEST MADE BY  
Marvin S. Krout, Director

DEPARTMENT  
Planning

DESIRED DOCKET DATE: July 12, 2004

IF EMERGENCY, GIVE REASON (See Art. 6, Sec. 2 of Charter)

Emergency Measure Required:

☐ Yes ☒ No

## REASONS OR JUSTIFICATION FOR PROPOSED LEGISLATION

Request for Ordinance for Council action on **CHANGE OF ZONE NO. 04024**, text and map amendments to Title 27 of the Lincoln Municipal Code (Zoning Ordinance), requested by the Director of Planning on behalf of the Lincoln Airport Authority, to adopt revised standards for the Airport Environs Noise District, reflecting the recommendations of the Lincoln Airport: Part 150 Noise Compatibility Study, by adding a new airport environs noise district boundary and noise contour map; amending § 27.58.010, "Scope of Regulations"; amending § 27.58.020, "Definitions"; amending § 27.58.030, "Use Regulations"; amending § 27.58.050, "Permitted Uses in Relation to Noise Exposure Levels"; amending § 27.58.060, "Conditional Permitted Residential Uses in Relation to Noise Exposure Levels"; amending § 27.58.080, "Aviation and Noise Easements: Covenant, Notice and Acknowledgment"; amending § 27.58.90, "Pre-existing uses"; and amending § 27.58.100, "Enforcement and Exemption."

On June 23, 2004, the Planning Commission recommended approval, with the revisions submitted on June 17, 2004.

ASSOCIATED REQUESTS: The following applications are associated requests and should be scheduled for hearing at the same time with action in the following sequence:

Comprehensive Plan Amendment No. 04002 04R-172  
Change of Zone No. 04024 04-131

FILED  
CITY CLERKS OFFICE  
2004 JUL - 1 A 10:42  
CITY OF LINCOLN  
NEBRASKA

REQUESTOR

☒ DOES ☐ DOES NOT

WISH TO REVIEW AND APPROVE THIS  
ORDINANCE PRIOR TO ITS INTRODUCTION

DIRECTOR'S SIGNATURE

DATE

## TO BE USED BY THE FINANCE DEPARTMENT

BUDGET  
REVIEW

DATE:

ACCOUNT NUMBER DATE:  
AND APPROPRIATE  
BALANCES

FUND AVAILABILITY  
APPROVED

DATE:

DIRECTOR OF FINANCE SIGNATURE

## DISTRIBUTION

Return two (2) copies to City Clerk for Docket Number

City Council Introduction: **Monday, July 19, 2004**  
Public Hearing: **Monday, July 26, 2004, at 5:30 p.m.**

Bill No. 04-131

## **FACTSHEET**

**TITLE:** **CHANGE OF ZONE NO. 04024**, text and map amendments to Title 27 of the Lincoln Municipal Code (Zoning Ordinance), requested by the Director of Planning on behalf of the Lincoln Airport Authority, to adopt revised standards for the Airport Environs Noise District, reflecting the recommendations of the Lincoln Airport: Part 150 Noise Compatibility Study.

**STAFF RECOMMENDATION:** Approval, as revised.

**ASSOCIATED REQUEST:** Comprehensive Plan Amendment No. 04002 (04R-172).

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 04/28/04; 05/26/04 and 06/23/04  
Administrative Action: 06/23/04

**RECOMMENDATION:** Approval, as revised (9-0: Pearson, Carroll, Marvin, Taylor, Krieser, Larson, Sunderman, Carlson and Bills-Strand voting 'yes').

### **FINDINGS OF FACT:**

1. The proposed text and map amendments to Title 27 of the Lincoln Municipal Code incorporate the recommendations of the **"Lincoln Airport Federal Aviation Regulation (F.A.R.) Part 150 Noise Compatibility Study."** A hard copy of the Study is being placed on file with the City Council office. A copy of the Study on cd is being provided to the City Council members and the City Clerk.
2. The staff recommendation to approve the proposed text and map amendments, as revised, is based upon the "Analysis" as set forth on p.3-7, concluding that the proposal is in conformance with the Comprehensive Plan. The proposed amendments strengthen the ordinance in maintaining compatibly-zoned land uses and minimize aircraft noise impacts on existing and future development within the airport environs. These amendments only apply to the "Airport Environs Noise District" which is located within Lincoln's three-mile jurisdiction.
3. The map amendments are found on p.15-16. The text amendments are set forth in the proposed ordinance.
4. The proposal was delayed at the Planning Commission to resolve issues relating to the aviation and noise easements. During the delay, the City of Lincoln and Lincoln Airport Authority also agreed to enter into an Interlocal Agreement that further clarifies the roles and responsibilities regarding the administration of the Airport Noise District regulations (See Memorandum dated June 17, 2004, p.17-18).
5. The minutes of the Planning Commission public hearings and action are found on p.9-12. The comments submitted by John Wood, Executive Director of the Lincoln Airport Authority are found on p.12 and 19-23. Peter Katt also testified in support on behalf of Hartland Homes, urging that the text amendments move forward as quickly as possible (p.11).
6. There was no testimony in opposition; however, the record consists of two letters in opposition-(p.24-25).
7. On June 23, 2004, the Planning Commission agreed with the staff recommendation and voted 9-0 to recommend approval.
8. The associated Comprehensive Plan Amendment No. 04002 was also recommended for approval, and will be on the same Council agenda for public hearing, as will be the proposed Interlocal Agreement.

**FACTSHEET PREPARED BY:** Jean L. Walker

**REVIEWED BY:** 

**REFERENCE NUMBER:** FS\CC\2004\CZ.04024

**DATE:** July 6, 2004

**DATE:** July 6, 2004

## **LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT**

**for April 28, 2004 PLANNING COMMISSION MEETING**

**P.A.S.:** Change of Zone #04024 - Airport Environs Noise District

**PROPOSAL:** Revise Lincoln Municipal Code (LMC) § 27.58, Airport Environs Noise District to modify ordinance to incorporate recommendations from the Lincoln Airport Federal Aviation Regulation (F.A.R.) Part 150 Noise Compatibility Study (referred to as the Noise Study). Specific text and map amendments to the Chapter are as follows:

Section 27.58.010, Scope of Regulations

Section 27.58.020, Definitions

Section 27.58.030, Use Regulations

Section 27.58.050, Permitted Uses in Relation to Noise Exposure Levels

Section 27.58.060, Conditional Permitted Residential Uses in Relation to Noise Exposure Levels

Section 27.58.080, Avigation and Noise Easements: Covenant, Notice and Acknowledgment

Section 27.58.90, Pre-existing uses

Section 27.58.100, Enforcement and Exemption

**CONCLUSION:** The proposal is in conformance with the Comprehensive Plan. These amendments strengthen the ordinance in maintaining compatibly-zoned land uses and minimizes aircraft noise impacts on existing and future development within the airport environs. These amendments modify the current ordinances and standards to reflect the Lincoln Airport F.A.R. Part 150 Noise Compatibility Study. These amendments only apply to the "Airport Environs Noise District" which is located within Lincoln's three mile jurisdiction.

<b>RECOMMENDATION:</b>	Approval of attached text and maps
------------------------	------------------------------------

### **GENERAL INFORMATION:**

#### **HISTORY:**

**Feb 2004** The Planning Department holds a Public Information Meeting and briefs the City-County Common and Planning Commission.

**Sept 2003** The Board of the Lincoln Airport Authority approves the Noise Study.

**July 2003** The Lincoln Airport Authority holds a final public hearing on the Noise Study, as required by Federal Aviation Regulations.

**June 2003** The Noise Study Planning Advisory Committee holds last meeting.

- June 2002** The Noise Study Planning Advisory Committee holds first meeting.
- May 2002** The Lincoln Airport Authority initiates a Noise Study to assess the existing and future aircraft noise impacts and noise contours for the airport environs.
- June 1982** The City of Lincoln adopted Lincoln Municipal Code, Chapter 27.58, Airport Environs Noise District.
- Feb 1980** The Airport Noise Control and Land Use Compatibility (ANCLUC) Study was completed.

## **RELATED APPLICATIONS:**

**CPA#04002** A text and map amendment to adopt the "Lincoln Airport F.A.R. Part 150 Noise Compatibility Study" as an approved subarea plan of the Lincoln/ Lancaster County Comprehensive Plan and amend the land use plan for the area generally between S.W. 40<sup>th</sup> and S. Coddington Avenue, from W. South Street to a ½ mile north of W. "A" Street.

## **ANALYSIS:**

1. The Airport Environs Noise District is an overlay zoning district that surrounds the Lincoln Airport. Within the District stricter regulations for noise-sensitive land uses, and disclosure to prospective property owners of aircraft overflight and noise impacts are enforced.
2. The 2003 Noise Study replaces the 1980 ANCLUC Study as the best available information that reflects current airport operations, and aircraft noise impacts to existing and future development. This amendment reflects the recommendations of the Noise Study, and allows revisions to be made to the Lincoln Municipal Code (LMC). The 2003 Noise Study is more accurate in representing aircraft noise levels than the 1980 ANCLUC Study, due to more sophisticated techniques and computer modeling regarding the mapping and measurement of aircraft noise contours.
3. A Planning Advisory Committee (PAC) participated with the Lincoln Airport Authority, and their consultant to complete the Noise Study. Representatives from the Arnold Heights Neighborhood Association, Capitol Beach Community Association, Coddington Mills Neighborhood Association, Highlands Neighborhood Association, West "A" Neighborhood Association, and West "O" Neighborhood Association, the City of Lincoln, various aircraft operators, the military and other groups met regularly to discuss issues and review findings and alternatives included the Noise Study.
4. A Noise Study is authorized under the Aviation Safety and Noise Abatement Act of 1979. The Noise Study was prepared according to the regulations contained within the Code of Federal Regulations. All models and methodologies contained within the Noise Study have been approved by the Federal Aviation Administration.

5. The 1980 ANCLUC Study provided land use guidance and the legal basis for the adoption of the Airport Environs Noise District Zoning Ordinance, and the current LMC that govern land uses within the District.
6. All uses permitted within the Airport Environs Noise District are required to grant an aviation and noise easement as a condition of development approval. This easement is a legal requirement that provides notice to prospective property owners of aircraft overflight and noise impacts, and that the property is located in the Airport Environs Noise District.
7. The land proposed to be added to the boundaries of the Airport Environs Noise District is located northwest, west and southwest of the airport (See Attached Map, Sec. 27.58.020). This land represents approximately 6,485 acres. The purpose for adding these properties to the District is to extend the disclosure requirement to prospective property owners of aircraft overflight and noise impacts. These properties are routinely impacted by touch-and-go military training activities, and shown as designated growth areas in the Comprehensive Plan.
8. The 2002 noise contour lines are generally narrower and shorter than the mapped noise contour lines identified in the current Lincoln Municipal Code. The Noise Study recommends incorporating the 60 Day Night Average Sound Level (DNL) noise contour. This new noise contour line is added to the 65 DNL, 70 DNL and 75 DNL noise contours already utilized in the current LMC to regulate and maintain compatibly-zoned land uses within the Airport Environs Noise District (See Attached Map, Sec. 27.58.010).
9. The current 65 DNL noise contour is very similar in shape to the 2002 60 DNL noise contour. During the preparation of the ANCLUC Study in 1980, the 60 DNL noise contour was recommended to be incorporated into the land use regulations for the City. However, due to the large size of the 60 DNL noise contour at the time and amount of land contained within the contour, it was determined that land use regulation within the 60 DNL noise contour was not feasible. This change to the regulations would have a minimal effect on land uses as the area is currently regulated by the land use regulations.
10. The noise contour lines are used to regulate where specific land uses are permitted. Each noise contour line represents a 24-hour annual average weighted noise level -- measured in decibels. The DNL measurement is the standard FAA metric for determining the cumulative exposure of individuals to aircraft noise. The DNL is weighted by adding a 10-fold penalty to each noise event occurring between 10:00 p.m. and 7:00 a.m.
11. The 2002 noise contour lines indicate where the 24-hour annual average weighted noise level occurs, and is shown in 5-decibel increments between 60 DNL and 75 DNL. While the noise contours in the District are only measured up to 75 DNL, single noise events measuring above the 24-hour annual average noise levels were recorded during the monitoring phase of the Noise Study. For example, between the 65 DNL and 70 DNL noise contour line, single noise events above 70 DNL were recorded.
12. If approved, a new "Airport Environs Noise District Map" would be adopted in the LMC, adding additional land to the district boundary and revising the noise contour lines. This

change amends Sections 27.58.010 and 27.58.020. The legal description of the proposed district boundary is shown as "Attachment A."

13. If approved, the proposed regulations and 2002 noise contour lines would permit changes in land use (i.e., from residential to non-residential), that under the mapped noise contour lines and zoning regulations in the current LMC are prohibited.
14. If approved, the proposed regulations would remove approximately 2,874 acres from noise-related restrictions.
15. If approved, the proposed regulations would add approximately 683 acres to noise-related restrictions.
16. If approved, the proposed regulations and 2002 noise contour lines would reduce the number of non-conforming uses. The proposed stricter standards do not create additional non-conforming residential or non-residential uses.
17. If approved, the proposed regulations would require the incorporation of acoustical features as a condition of approval for the following uses, which are not required in the current LMC. These uses include educational, religious, health and childcare facilities above the 60 DNL noise contour line, where permitted; and offices, retail and service businesses, restaurants, eating and drinking establishments above the 60 DNL noise contour line.
18. If approved, the proposed regulations would require the incorporation of acoustical features as a condition of approval for **residential** uses above the 60 DNL noise contour line, where permitted. The current LMC requires this standard above the 65 DNL noise contour line.

19. If approved, the following proposed noise-related regulations for generalized land uses would be considered more restrictive than the current LMC:

Permitted Uses (Proposed Regulations)	Day Night Average Sound Level (DNL) not to exceed	
	Current LMC	Proposed (2002)
Residential	70	65
Park facilities	70	65
Cemeteries, mausoleums and undertaking establishments	75	70
Indoor sport and recreation facilities	75 or no restrictions	70
Outdoor sport and recreation facilities	75	65
Race Tracks for Motorized Vehicles	75	70

20. If approved, the following proposed noise-related regulations for generalized land uses would be considered less restrictive than the current LMC:

Permitted Uses (Proposed Regulations)	Day Night Average Sound Level (DNL) not to exceed	
	Current LMC	Proposed (2002)
Indoor entertainment facilities	65	70

21. If approved, the proposed regulations would add Figure 27.58.050, a matrix of generalized land uses and associated noise-related restrictions for each noise contour level. This figure would eliminate text in Section 27.58.050 (a) (1 through 4) in the current LMC.

22. If approved, the proposed regulations would eliminate the requirement for Planning Director review and approval of site plans; eliminate site plan submittal requirements; eliminate the twenty-day notification period; and eliminate the appeal procedures for site plans that are not approved, as shown in Section 27.58.060 (1 through 3 and 5) in the current LMC.
23. If approved, the proposed regulations would add Figure 27.58.080, a model avigation and noise easement, as referenced in Section 27.58.080 in the current LMC.
24. If approved, the proposed regulations would amend miscellaneous text in Chapter 27.58 to reflect the proposed regulations.
25. The proposed text and map amendments are in conformance with the Comprehensive Plan. The Comprehensive Plan provides support for implementing noise compatibility programs to reduce aircraft noise impacts and non-compatible land uses. The Comprehensive Plan promotes siting land uses in appropriate locations throughout the community. The Comprehensive Plan also promotes the use of the best available information to remain responsive to changing conditions.
26. The proposed text and map amendments only apply to the "Airport Environs Noise District" which is located within Lincoln's three mile jurisdiction.

Prepared by:

Duncan Ross, AICP  
441-7603, [dross@ci.lincoln.ne.us](mailto:dross@ci.lincoln.ne.us)  
Planner

April 20, 2004



**APPLICANT:** Marvin S. Krout, Director  
Planning Department  
555 South 10<sup>th</sup> Street  
Lincoln, NE 68508  
(402) 441-7491 and

John Wood, Executive Director  
Lincoln Airport Authority  
P.O. Box 80407  
Lincoln, NE 68501  
(402) 458-2400

**CONTACT:** Duncan Ross  
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555 South 10<sup>th</sup> Street  
Lincoln, NE 68508  
(402) 441-7603

Jon Large  
Lincoln Airport Authority  
P.O. Box 80407  
Lincoln, NE 68501  
(402) 458-2400

# **COMPREHENSIVE PLAN AMENDMENT NO. 04002 and CHANGE OF ZONE NO. 04024**

## **PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 28, 2004

Members present: Larson, Carroll, Taylor, Sunderman, Carlson, Pearson, Krieser, and Bills-Strand; Marvin absent.

Staff recommendation: Approval.

Ex Parte Communications: None.

Duncan Ross of Planning staff submitted two letters in opposition.

Ross gave a history of the proposal. The staff briefed the Planning Commission on February 4, 2004, and reviewed the general concept of the noise study and why it was undertaken. Today, the staff is following up with the two related applications, the Comprehensive Plan Amendment and the Change of Zone text amendment. The Comprehensive Plan Amendment has three main parts: 1) updating the Comprehensive Plan to include the noise study as a subarea plan that provides policy guidance when reviewing land use actions in this area; 2) as a result of the noise study recommendation, we are proposing to approve the request by Duane Hartman to change approximately 80 acres currently designated commercial to residential; and 3) (unrelated to the noise study), expanding the future service limit in the area of S.W. 40<sup>th</sup> and West "A" to include approximately 115 acres in Priority A of Tier I.

The change of zone brings forward a number of recommendations that are identified in the noise study, including extending the district requiring avigation and noise easements to include areas out in the future growth areas which are today under the flight of military training aircraft. As this area develops, we would like to see the avigation and noise easement extended to future properties. In 1980, the previous noise study was completed which identified the noise contours used for regulation today. This study updates those noise contours and the new contours are generally narrower and shorter than the ones used today, including the 60 day/night noise sound level. This proposal also modifies a number of other areas of the ordinance, some minor and some more in keeping with language and definitional changes that update the ordinance to reflect what we have done with the rest of the ordinance over the last 20 years. The noise contours themselves provide further restrictions on what types of uses can be located within that noise contour. The proposed noise contour substantially reduces the number of nonconforming uses and it does not create any additional nonconforming uses. These are uses very close to the airport that are today considered nonconforming. The new noise contours substantially improve the nonconforming status of a lot of property.

Ross advised that the Planning Department notified about 1400 individuals and property owners in January for a public information meeting held on February 2, 2004. Since January and with the recent notification for this meeting, the Planning Department has received a lot of phone calls.

Ross then requested that the Commission defer these applications until May 26<sup>th</sup> due to updated information which the staff received this morning.

Carlson sought clarification of "lowering the standard to 60". Does that mean we are lowering the noise threshold at which additional protections need to be created? Ross explained that it means that we are identifying a new threshold of significance for noise. 60 is a lower noise contour than the current 65 noise contour. We are doing this because the footprint between the current regulations and the new ones are very similar and after 20 years of research on how noise impacts individuals, it has been recommended through the noise study that we go to the new 60 significant noise threshold.

Carlson moved to defer, with continued public hearing and administrative action on May 26, 2004, seconded by Krieser and carried 8-0: Larson, Carroll, Taylor, Sunderman, Carlson, Pearson, Krieser, and Bills-Strand voting 'yes'; Marvin absent.

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 26, 2004

Members present: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, Carroll and Bills-Strand; Taylor absent.

Staff recommendation: Approval.

Ex Parte Communications: None.

Proponents

**1. Duncan Ross of Planning staff** requested an additional four-week continuance. In the past four weeks, some of the issues that were identified between the city and the Airport Authority were resolved; however, some of the key staff have been out of the office so he is not able to bring forward the result of the discussions and to finalize the modifications to the text amendments.

Larson asked about the restrictions that are in effect in these areas. Ross stated that the proposed regulations put a number of new restrictions on particular uses in the higher noise contours, which are different than the restrictions in the land uses today. Today we have restrictions on residential land uses up to 70 dnl. In the future, the residential restriction would go down to 65 dnl and there are a number of restrictions for particular land uses that are sensitive to aircraft noise. It is a change in the type of uses that will be restricted. Larson wondered if the change from 70 to 65 will cover some existing houses. Ross explained that the area of 65 is generally the same as the area that is 70 today. As a result of the proposed changes, there is a number of areas where housing would be permitted that is not permitted today.

Larson moved to defer, with continued public hearing and administrative action on June 23, 2004, seconded by Krieser and carried 8-0: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, Carroll and Bills-Strand voting 'yes'; Taylor absent.

**2. Peter Katt** appeared on behalf of **Hartland Homes**. Hartland Homes is not opposed to the deferral, but this needs to move forward on June 23<sup>rd</sup>. Hartland Homes has had a lot of experience and has built a lot of homes in the area of the airport noise environs. The current project Hartland is working on, called Hartland Homes Southwest, located east of SW 27<sup>th</sup> on the south side of A Street, will be nearly finished by spring of next year. As a result of these proposed changes, the property immediately west that is zoned H-4 is on the market and available for purchase, which Hartland acquired in anticipation that these noise standards would change and that property would become available for residential development. There is interest in getting these changes moved forward. When we had discussions with staff beginning last summer, the timeline for this change in the airport noise standards was to have been shortly after the first of the year and now it is June.

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 23, 2004

Members present: Pearson, Carroll, Marvin, Taylor, Krieser, Larson, Sunderman, Carlson and Bills-Strand.

Staff recommendation: Approval of the Comprehensive Plan Amendment, and approval of the Change of Zone, as revised on June 17, 2004.

Ex Parte Communications. None.

Proponents

**1. Duncan Ross** of Planning staff stated that some points of clarification in the change of zone application have been resolved during the last eight weeks and the revisions to the text amendment were submitted on June 17, 2004. Nothing has changed on the Comprehensive Plan Amendment.

In 2002, the Airport Authority initiated a Part 150 Study to update the noise study that was done in 1980. After a long process with the public and an advisory committee, the study was completed in September of 2003, and just last week the airport was notified that the FAA has accepted the study.

These applications are a result of the noise study and the recommendations that were contained therein. This application also increases the future service limit and changes some land uses outside the areas impacted by noise.

The revisions to the text amendment clarify some of the language regarding aviation and noise easements.

As a result of this amendment, Ross indicated that we are now regulating up to 60 DNL sound level for restriction of certain land uses that are sensitive to noise, where previously, we restricted certain uses only down to 65 DNL. This also increases the district boundary to include areas that are in the future growth zones of Lincoln.

**2. John Wood, Executive Director of Lincoln Airport Authority,** testified in support. He explained the study process, being the result of the changes in the noise level of civil aircraft and the change in aircraft types used by the National Guard with there being no fighter jets being flown by the National Guard. The purpose of the legislation is to continue to protect the airport from encroachment by incompatible uses. Because aircraft have gotten quieter, some areas surrounding the airport can be considered for uses that were restricted in the past. He asked the Commission to keep in mind that while some areas previously restricted from noise sensitive uses, such as residential development, may now be allowed, some of these areas are still exposed to aircraft over-flight and aircraft noise. Additional areas west of the airport are proposed to be included in the Airport Environs District. This is related to the change in aircraft by the Air National Guard. Wood also submitted an appraisal from Matthew J. Wilson indicating that there is no relationship between aviation easements and property value.

There was no testimony in opposition.

**COMPREHENSIVE PLAN AMENDMENT NO. 04002**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

June 23, 2004

Larson moved approval, seconded by Marvin and carried 9-0: Pearson, Carroll, Marvin, Taylor, Krieser, Larson, Sunderman, Carlson and Bills-Strand voting 'yes'. This is a recommendation to the City Council and the Lancaster County Board.

**CHANGE OF ZONE NO. 04024**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

June 23, 2004

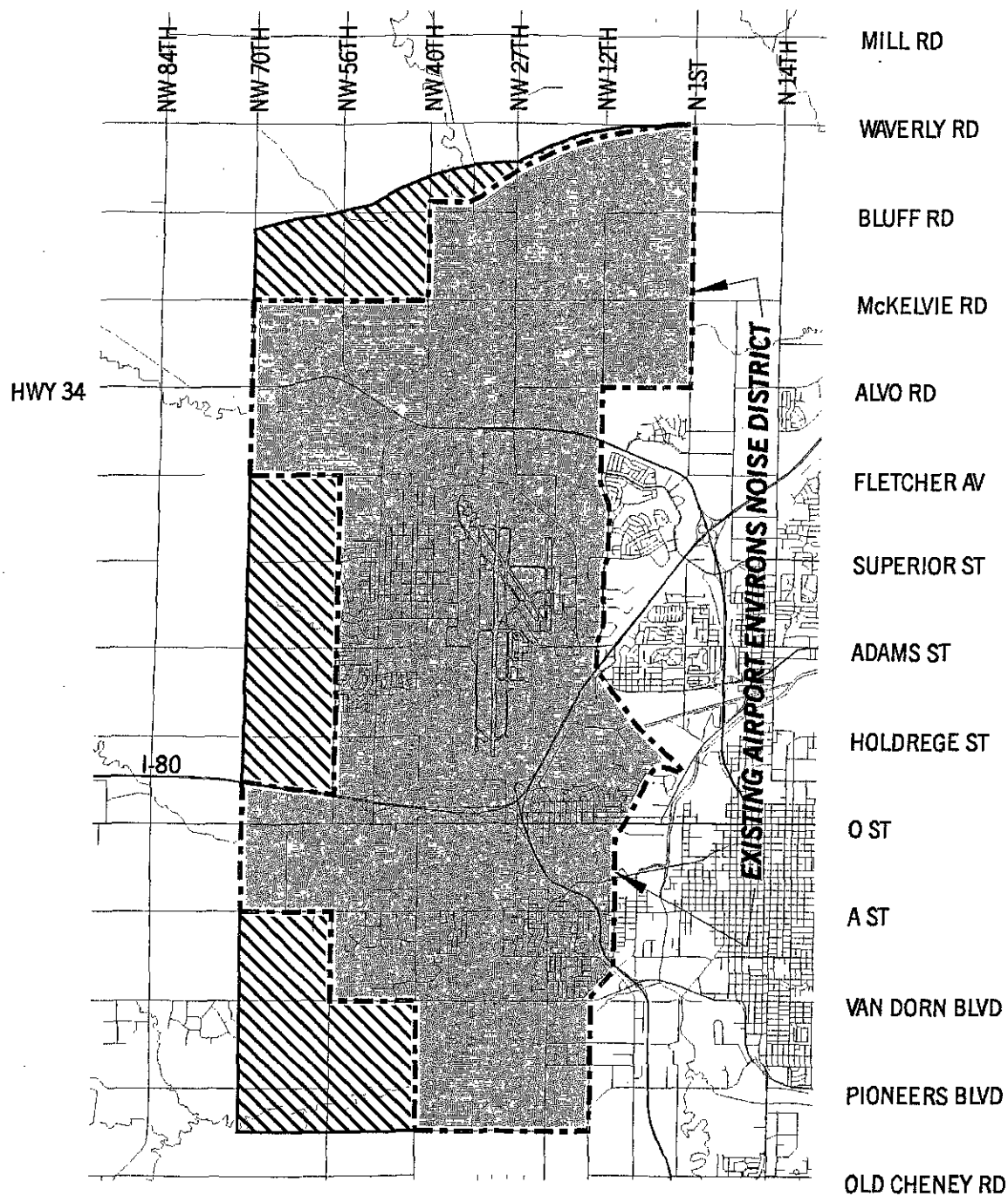
Larson moved approval, as revised, seconded by Krieser and carried 9-0: Pearson, Carroll, Marvin, Taylor, Krieser, Larson, Sunderman, Carlson and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

## **Airport Environs Noise District - Legal Description for Section 27.58.020**

### **Attachment 'A'**

BEGINNING AT A POINT LOCATED ON SOUTHWEST 12<sup>th</sup> STREET AT THE SOUTHEAST CORNER OF THE NORTH HALF OF SECTION 9, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6<sup>th</sup> P.M., LANCASTER COUNTY, NEBRASKA, THENCE NORTHERLY ALONG SOUTHWEST 12<sup>th</sup> STREET, SAID LINE ALSO BEING THE EAST LINE OF SECTIONS 9 AND 4, TOWNSHIP 9 NORTH, RANGE 6 EAST, AND THE EAST LINE OF SECTION 33, TOWNSHIP 10 NORTH, RANGE 6 EAST A DISTANCE OF APPROXIMATELY 8,100 FEET TO THE CENTERLINE OF THE BURLINGTON NORTHERN SANTA FE RAILROAD TRACKS; THENCE NORTHEASTERLY ALONG SAID RAILROAD TRACK CENTERLINE A DISTANCE OF APPROXIMATELY 2,000 FEET; THENCE NORTHERLY ALONG THE CENTERLINE OF SOUTHWEST 9<sup>th</sup> STREET AND ITS EXTENSION NORTH AND SOUTH THROUGH THE WEST HALF OF SECTIONS 34 AND 27, TOWNSHIP 10 NORTH, RANGE 6 EAST A DISTANCE OF APPROXIMATELY 8,200 FEET TO THE CENTERLINE OF A BURLINGTON NORTHERN SANTA FE RAILROAD TRACK. SAID TRACK BEING APPROXIMATELY 500 FEET SOUTH OF "O" STREET; THENCE NORTHEASTERLY ALONG THE FORMER BURLINGTON NORTHERN SANTA FE RAILROAD CENTERLINE THROUGH SECTIONS 27 AND 22, TOWNSHIP 10 NORTH, RANGE 6 EAST TO THE INTERSECTION OF SAID RAILROAD CENTERLINE AND THE EAST LINE OF SECTION 22, TOWNSHIP 10 NORTH, RANGE 6 EAST; THENCE NORTHERLY ALONG THE EAST LINE OF SAID SECTION 22 A DISTANCE OF APPROXIMATELY 150 FEET TO THE CENTERLINE OF THE UNION PACIFIC RAILROAD TRACKS; THENCE NORTHWESTERLY ALONG SAID RAILROAD TRACK CENTERLINE THROUGH SECTIONS 22 AND 15, TOWNSHIP 10 NORTH, RANGE 6 EAST TO AN INTERSECTION WITH THE WEST LINE OF SECTION 15, TOWNSHIP 10 NORTH, RANGE 6 EAST; THENCE NORTH ALONG THE WEST LINE OF SECTION 15, TOWNSHIP 10 NORTH, RANGE 6 EAST TO AN INTERSECTION WITH THE CENTERLINE OF NORTHWEST 12<sup>th</sup> STREET; THENCE NORTHERLY ALONG THE CENTERLINE OF NORTHWEST 12<sup>th</sup> STREET TO ITS INTERSECTION WITH THE

CENTERLINE OF NORTHWEST 13<sup>th</sup> STREET IN SECTION 3 TOWNSHIP 10 NORTH, RANGE 6 EAST; THENCE CONTINUING NORTHERLY ALONG THE CENTERLINE OF SAID NORTHWEST 13<sup>th</sup> STREET TO ITS INTERSECTION WITH THE CENTERLINE OF WEST FLETCHER AVENUE; THENCE WESTERLY ALONG THE CENTERLINE OF SAID WEST FLETCHER AVENUE TO A POINT ON THE WEST LINE OF SECTION 34, TOWNSHIP 11 NORTH, RANGE 6 EAST; THENCE NORTHERLY ALONG THE WEST LINE OF SAID SECTION 34 TO THE SOUTHEAST CORNER OF SECTION 28, TOWNSHIP 11 NORTH, RANGE 6 EAST; THENCE EAST ALONG THE SOUTH LINE OF SECTION 27, TOWNSHIP 11 NORTH, RANGE 6 EAST TO AN INTERSECTION WITH NORTH 1<sup>st</sup> STREET, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF SECTION 27, TOWNSHIP 11 NORTH, RANGE 6 EAST; THENCE NORTH ALONG NORTH 1<sup>st</sup> STREET AND ALONG THE EAST LINE OF SECTIONS 27, 22, AND 15, TOWNSHIP 11 NORTH, RANGE 6 EAST TO THE CITY OF LINCOLN'S THREE-MILE ZONING JURISDICTION LINE; THENCE WESTERLY ALONG SAID THREE-MILE ZONING JURISDICTION LINE TO ITS INTERSECTION WITH NORTHWEST 70<sup>th</sup> STREET. SAID POINT BEING ON THE WEST LINE OF SECTION 24, TOWNSHIP 11, RANGE 5 EAST; THENCE SOUTH ALONG THE WEST LINE OF SECTIONS 24, 25 AND 36, TOWNSHIP 11 NORTH, RANGE 5 EAST, AND ALONG THE WEST LINE OF SECTIONS 1, 12, 13, 24, 25 AND 36, TOWNSHIP 10 NORTH, RANGE 5 EAST, AND ALONG THE WEST LINE OF SECTIONS 1 AND 12, TOWNSHIP 9 NORTH, RANGE 5 EAST TO THE SOUTHWEST CORNER OF THE NORTH HALF OF SECTION 12, TOWNSHIP 9 NORTH, RANGE 5 EAST; THENCE EAST ALONG THE SOUTH LINE OF THE NORTH HALF OF SECTION 12, TOWNSHIP 9 NORTH, RANGE 5 EAST, AND ALONG THE SOUTH LINE OF SECTIONS 7, 8 AND 9, TOWNSHIP 9 NORTH, RANGE 6 EAST, SAID LINE ALSO BEING ALONG WEST CLAIRE AVENUE AND ITS EXTENSION EAST AND WEST, TO THE POINT OF BEGINNING AT THE SOUTHEAST CORNER OF THE NORTH HALF OF SECTION 9, TOWNSHIP 9 NORTH, RANGE 6 EAST.



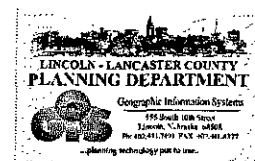
# Change of Zone 04024 - Areas to be Added to Airport Environs Noise District

## Proposed Amendment to Sec. 27.58.020

-  Existing Airport Environs Noise District
-  Area to be Added to Existing Airport Environs Noise District

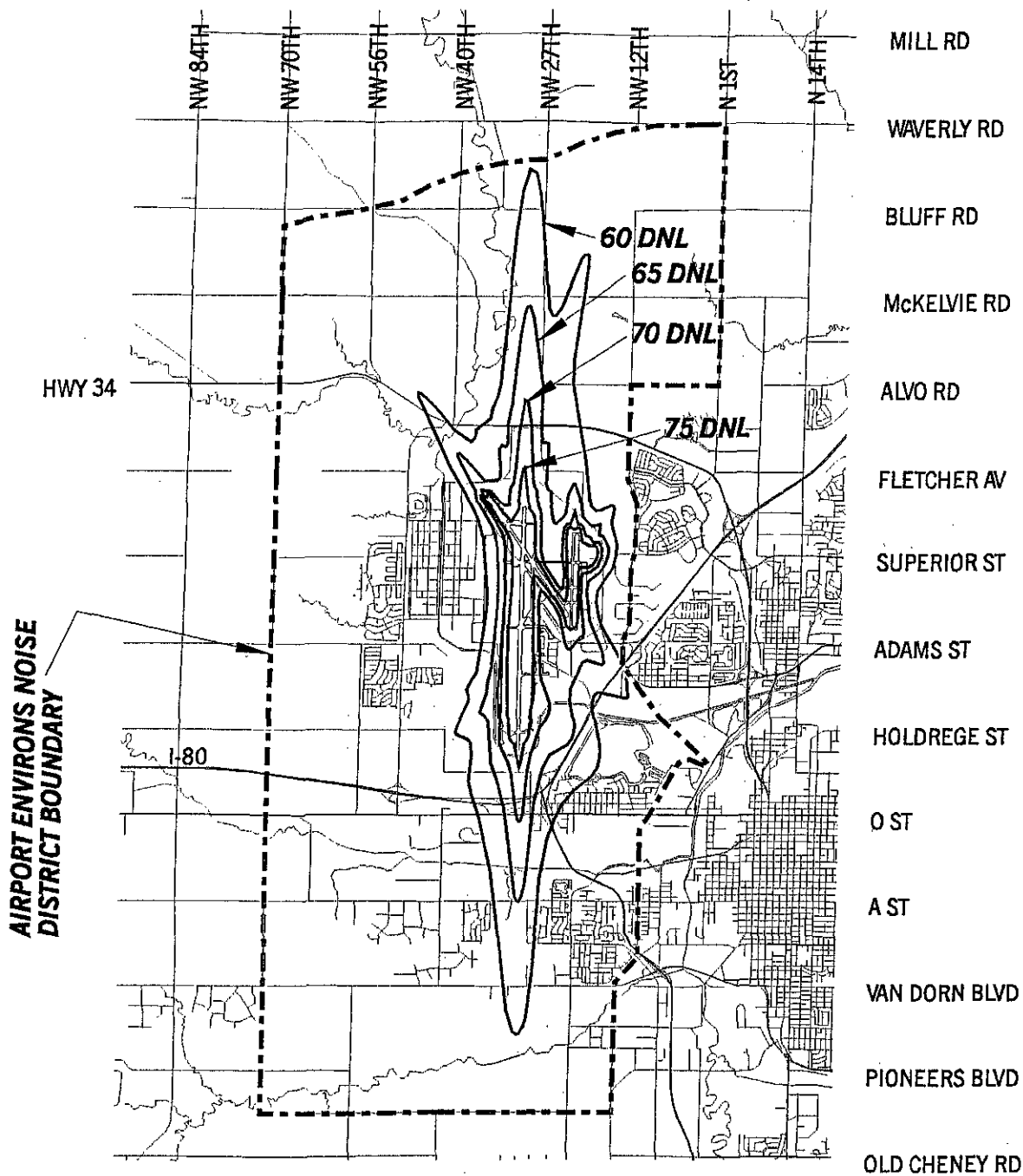


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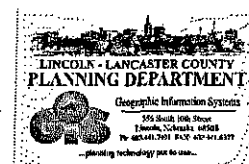
# Change of Zone 04024

## Airport Environs Noise District Map

### Proposed Amendment to Sec. 27.58.010



**MILES**  
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# MEMORANDUM


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**TO:** Planning Commission

**FROM:** Duncan Ross, Planning 

**SUBJECT:** Change of Zone No. 04024  
Airport Environs Noise District Modifications

**DATE:** June 17, 2004

**COPIES:** Rick Peo, City Law  
Jon Large, Lincoln Airport Authority  
Marvin Krout, Ray Hill, Greg Czaplewski,  Planning

Change of Zone #04024 is proposed to modify the existing Airport Environs Noise District in the zoning ordinance, updating and making the regulations consistent with the recently completed Lincoln Airport Part 150 Noise Study. Since the initial public hearing for this Change of Zone on April 28, 2004, the Lincoln Airport has now received acceptance of the Part 150 Study from the regional Federal Aviation Administration Office.

Over the past months, the draft ordinance was further evaluated and some changes are reflected in the attached revised ordinance. Also, the City of Lincoln and Lincoln Airport Authority have agreed to enter into an Interlocal Agreement that further clarifies the roles and responsibilities regarding the administering of the District's regulations. This Interlocal Agreement will be forwarded to the City Council for review. The attached revised draft Airport Environs Noise District ordinance dated June 4, 2004, identifies the new changes in highlighted shading. There are three substantive changes.

The primary modification is a revision to Section 27.58.080, Avigation and Noise Easements. The previous draft referenced a requirement for both an avigation and noise easement, and also a covenant, notice and acknowledgment as a condition of approval for applicable developments within the District. The new draft reflects a requirement to require only an avigation and noise easement as a condition of approval for applicable developments with the District. Also, the "Model Avigation and Noise Easement" is included within the draft ordinance, and the language in current Section 27.58.080 oversimplifies the conditions of the easement. It seemed appropriate to delete the language referring to the conditions of the easement as indicated.

**Memorandum on Change of Zone #04024**  
**Page 2**

The second revision to the ordinance is the removal of a paragraph in the model easement that conveys to the Airport Authority permission to remove, mark, light, or take any action necessary to prevent aircraft obstructions above the property owner's land.

The third revision includes a new legal description for the District. Previously the revised legal description was identified as an attachment in the staff report. Including the new legal description in the ordinance further clarifies it as a component of the revised ordinance.

None of these amendments changes the intent or purpose of the Change of Zone. For your June 26 meeting, the Planning Department and Airport Authority requests that you take action on this Change of Zone and related Comprehensive Plan Amendment #04002. If you have questions, ahead of the June 26 meeting please call me at 441-7603.

F:\FILES\PLANNING\PC\CZ\04000\CZ04024 memo revisions 061704.dlr.wpd

REMARKS BEFORE PLANNING COMMISSION

In 1980 the Airport Authority completed a Noise Study, then called an Aircraft Noise and Land Use Compatibility or ANCLUC, to identify high noise areas and allow for land use planning and conformity with airport operations. Not only were commercial and corporate jets much noisier then than they are today, but the National Guard was flying fighter jets at that time that were extremely noisy. The current Airport Environs District, based on the 1980 ANCLUC Study, successfully protected the airport from encroachment for the past 24 years as Lincoln continued to grow.

Since then, civil aircraft have gotten quieter and the National Guard changed aircraft types and are no longer flying fighter jets in Lincoln.

As the 20 year life span of the 1980 Study came to an end the Airport Authority began the process of seeking FAA funding for a new Study, now called an FAR Part 150 Noise Compatibility Study, as outlined in Federal Aviation Regulations. The events of September 11<sup>th</sup>, 2001 slowed down the funding approval for the Study but it finally commenced in April, 2002.

The Study has been completed and adopted by the Airport Authority Board and final approval has recently been received from the Federal Aviation Administration. We have worked closely with City-County Planning staff throughout and the proposed zoning amendments before you today are the results of that effort and are based on the findings outlined in the Part 150 Study.

We would like to express our appreciation to the Planning Dept. staff and especially Duncan Ross for all their work and involvement in this process.

Obviously, we wish to continue to protect the airport, a major economic force in the local economy, from encroachment by incompatible uses. We also recognize that because aircraft have gotten quieter some areas surrounding the airport can be considered for uses that were restricted in the past. Finding the correct mix is often difficult. Please keep in mind that while some areas previously restricted from noise sensitive uses such as residential development, may now be allowed, some of these areas are still exposed to aircraft over-flight and aircraft noise. In some cases this over-flight will be on a continual basis as aircraft are arriving or departing from the airport runways.

The other area of change being proposed, to the Airport Environs District, is the inclusion of additional areas west of the airport.

This is related to the change in aircraft by the Air National Guard. The areas west of the airport, in the existing Environs District, were included because those were the areas overflown by the F-4 Phantom fighter jets the Guard was flying in 1980.

The KC-135's which the Guard flies today have different operational characteristics and their flight patterns put additional areas under regularly used and necessary flight

paths. We need to continue to provide protection for all airport users especially one as important as the Air National Guard, which is not only a major airport tenant but also a major employer and economic force in Lincoln. We want to do all we can to insure the airport meets their needs so that there is minimal risk that the federal government would consider closing the National Guard Base under some future Base Realignment and Closure process.

The Airport Authority is aware of concerns that have been expressed that the grant of an avigation easement may have a detrimental impact on the market value of the subject property. We have had this issue researched by Lincoln appraiser Joe Wilson and a copy of his report has just been submitted to you. As you will note in his report, he found no basis for a detrimental impact on market value of property where an avigation easement has been granted.

Continuing to protect the airport is a vital and delicate issue.

We would appreciate your favorable consideration of the amendments as proposed and urge their adoption as presented.

**WILSON APPRAISAL COMPANY**2019 South 12<sup>TH</sup> Street - Lincoln, Nebraska 68502

Office: (402) 475-3030 - Fax: (402) 475-3038

June 11, 2004

Mr. Michael Johnson  
Johnson Law Office, P.C.  
6101 South 58<sup>th</sup> - Suite D  
Lincoln, NE 68516

RE: Avigation Easements

Dear Mr. Johnson:


At your request, I have researched the market for lot sales in the west portion of Lincoln to find what effect, if any, avigation easements have on the market value of vacant lots in that area.

My research included both county records and the Lincoln Board of Realtors MLS system. My research included over 50 vacant lot sales, generally in the size range of 60' x 120', in areas both with and without avigation easements. The only subdivision with an avigation easement that is currently selling lots (that I know of) is Ashley Heights. Currently the typical lots in the area are selling for approximately \$33,000. I researched three subdivisions in west Lincoln, Timber Ridge, Lee's Place and Vesteka's Villa Van Dorn Addition. The most recent sales in these three subdivisions are selling from \$30,000 to \$33,000, with most of these sales occurring last year, in 2003. Based on this data it would seem that there is no relationship with avigation easements and value.

Further, I have talked to two developers in the area, Hub Hall and Duane Hartman. Both of these developers indicated to me that the avigation easements have no effect on the value of their developments.

I hope that this answers your questions, but if not, don't hesitate to contact me.

Sincerely,

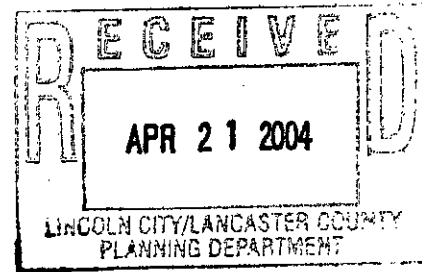


Matthew J. 'Joe' Wilson  
CG 920198

April 20, 2004

Lincoln/Lancaster County Planning Commission  
555 So. 10<sup>th</sup>, Suite 213  
Lincoln, NE 68508

RE: Comprehensive Plan Amendment #04002  
Change of Zone #04024



The Lincoln Airport Authority fully supports and hereby requests the Commission's full support for the adoption of Comprehensive Plan Amendment #04002 based on recommendations contained in the Lincoln Airport Federal Aviation Regulation (F.A.R.) Part 150 Noise Compatibility Study.

The Lincoln Airport Authority initiated the federally funded Part 150 Noise Study in April, 2002 due to the expiration of the old (1980) Study and changes in aircraft mix utilizing the Lincoln Airport. We worked closely with our consultants, Coffman Associates; a Planning Advisory Committee made up of a diverse group of local individuals; as well as Planning Department staff and other stakeholders over the last 18 months to complete the Study requirements.

The Airport Authority Board approved the Study last September and submitted it to the FAA for approval. We are still waiting for FAA approval and anticipate FAA approval of the Study within the next few weeks.

During the study, and since its completion, the Airport Authority has worked closely with Planning Department staff to evaluate all land use management elements that are contained in the amendments you are considering.

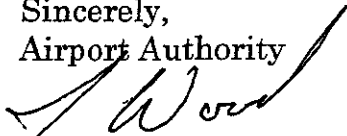
We believe that these amendments continue to maintain compatibly-zoned land, minimize the number of residents exposed to aircraft noise, and guide future land use decisions, all in a manner that is consistent with the current and foreseeable future operations of the Lincoln Airport.

We recognize that although this is an Airport Authority/FAA study, we can only make recommendations to you relative to compatible land use. Since the Planning Commission is the responsible governmental agency to review and recommend changes to the Comprehensive Plan we request your thoughtful consideration and adoption of the presented amendments to ensure the

Planning Commission  
April 20, 2004  
Page 2

harmonious growth of both the Lincoln Airport and the people of Lincoln,  
Nebraska.

Sincerely,  
Airport Authority

A handwritten signature in cursive script, appearing to read "John Wood", is written over the printed name and title.

John Wood  
Executive Director

JW/lb



IN OPPOSITION

ITEM NO. 3.9a&b: COMP PLAN AMENDMENT 04002  
CHANGE OF ZONE NO. 04024  
(p.155 & 169 - Public Hearing - 4/28/04)

**GEORGE BOOL**

9000 NW 40th  
Lincoln NE 68524  
402-470-0277

April 28, 2004

City of Lincoln  
Planning Commission

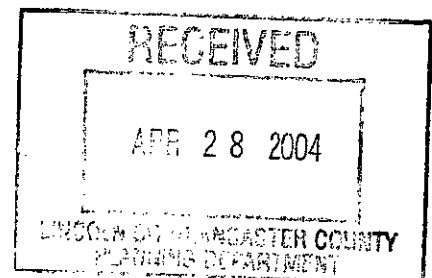
To Whom it May Concern,

I am a property owner located in the noise district and a tenant for Reed Sisters and Bool Family Partnership. Speaking on behalf of myself and as a representative for the Reeds and the Boos I want to be on record against the comprehensive plan amendment.

# 04002  
#0 4028 change of zone

I believe the restrictions proposed on our air space would be taking part of our air space rights without compensation.

Sincerely, *George H. Bool*  
George H. Bool





pen06fs@msn.com

04/27/2004 01:31 PM

To: <plan@ci.lincoln.ne.us>

cc:

Subject: Change of Zone No. 04024

<?xml:namespace prefix="v" /><?xml:namespace prefix="o" />

City County Planning Commission  
555 South 10th Street  
Lincoln, NE 68508

RE: Change of Zone 04024  
Areas to be Added to Airport Environs Noise District

Ladies and Gentlemen:

I am the owner and operator of 160 acres of land, Legal Description SW1/4 of 1-9-5 Denton Prescint. The land is located between 63rd and SW 70th and West Pioneer. The northwest corner of this property abuts the southeast corner of prime developed acreages. The residents living there have elected to move there because of the serene and quiet surroundings.

I am at a loss to understand why my land in particular, as well as the surrounding area has become a concern for the Planning Commission.

I have farmed this land for 55 years and continue to do so. I have always found it to be a quiet location. Previous studies have apparently shown this fact to be true.

I respectfully request that the Planning Commission reconsider and delete land at 1-9-5 from the area to be added to Airport Environs Noise District.

Respectfully,  
Frank A. Sobotka (Trustee)  
Of the Frank A. Sobotka Revocable Living Trust

18408

|                  |                      |
|------------------|----------------------|
| Read First Time  | July 19, 2004        |
| Read Second Time | JUL 26 2004          |
| Read Third Time  | AUG 02 2004          |
| Passed           | AUG 02 2004          |
| Published in     | Lincoln Journal Star |
| on               | AUG 13 2004          |

State of Nebraska )  
 ) SS  
County of Lancaster )

I, the undersigned, City Clerk of the City of Lincoln, Nebraska, do hereby certify that the within ordinance is the original Ordinance No. 18408 as passed by the City Council of said City, as indicated above, and as approved by the Mayor of said City and as the same appears of record in my office and is now in my charge remaining as City Clerk aforesaid.

IN WITNESS WHEREOF, I have herunto set my hand officially and affixed the seal of the City of Lincoln, Nebraska this 7<sup>th</sup> day of August, 2004.

**City Clerk of Lincoln**

